



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF N-T-, INC.

DATE: APR. 25, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a technology staffing and consulting business, seeks to employ the Beneficiary in the as a Java developer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Texas Service Center, found that the Petitioner did not establish that it has the continuing ability to pay the proffered wage to its multiple beneficiaries.

The matter is now before us on appeal. On appeal, the Petitioner contends that it has established its continuing ability to pay the proffered wage to the Beneficiary. Upon *de novo* review, we will sustain the appeal and approve the petition.

As required by statute, the petition is accompanied by an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the labor certification is September 30, 2013. *See* 8 C.F.R. § 204.5(d). The Director found that the Petitioner did not establish that it has the continuing ability to pay the proffered wage to all of its beneficiaries. Pursuant to 8 C.F.R. § 204.5(g)(2) the petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence.

Upon review of the entire record, including evidence submitted on appeal and in response to our January 27, 2015 notice of intent to dismiss and July 9, 2015, request for evidence, we conclude that the Petitioner has established that it had the continuing ability to pay the proffered wage. Accordingly, the petition is approved under section 203(b)(2) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

*Matter of N-T-, Inc.*

**ORDER:** The appeal is sustained.

Cite as *Matter of N-T-, Inc.*, ID# 12410 (AAO Apr. 25, 2016)